April 6, 1999

ENGROSSED
SENATE BILL No. 643

DIGEST OF SB 643 (Updated April 6, 1999 12:10 pm - DI 58)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Tax credit for brownfield program. Allows a credit against state tax liability for certain voluntary environmental remediation costs. Limits the credit to $200,000 per project and $2,000,000 statewide. Provides that the credit amount for each year shall be deducted from the industrial development grant fund and the environmental remediation revolving loan fund subaccount to replenish the state general fund

Effective: January 1, 2000.

Simpson, Gard

(HOUSE SPONSORS — WEINZAPFEL, WOLKINS, KUZMAN)

January 25, 1999, read first time and referred to Committee on Environmental Affairs.
February 9, 1999, amended, reported favorably — Do Pass; recommitted to Committee on Finance.
March 1, 1999, amended, reported favorably — Do Pass.
March 4, 1999, read second time, ordered engrossed.
March 5, 1999, engrossed.
March 8, 1999, read third time, passed. Yeas 49, nays 1.

HOUSE ACTION

March 10, 1999, read first time and referred to Committee on Environmental Affairs.
April 5, 1999, reported — Do Pass; recommitted to Committee on Ways and Means pursuant to House Rule 127.
April 6, 1999, amended, reported — Do Pass.

April 6, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

ENGROSSED
SENATE BILL No. 643

A BILL FOR AN ACT to amend the Indiana Code concerning taxation and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 6-3.1-20 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2000]:

Chapter 20. Voluntary Remediation Tax Credit

Sec. 1. As used in this chapter, "brownfield" has the meaning set forth in IC 13-11-2-19.3.

Sec. 2. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a partnership;

(3) a limited liability company; or

(4) a limited liability partnership.

Sec. 3. As used in this chapter, "qualified investment" means costs that:

(1) are incurred to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;

(2) may not be recovered by a taxpayer from any other person after the taxpayer has made a good faith effort to recover the costs; and

(3) are approved by the department of environmental management under section 12 of this chapter.

Sec. 4. As used in this chapter, "state tax liability" means a taxpayer's total tax liability incurred under:

(1) IC 6-2.1 (the gross income tax);

(2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

(3) IC 6-3-8 (the supplemental net income tax);

(4) IC 6-5-10 (the bank tax);

(5) IC 6-5-11 (the savings and loan association tax);

(6) IC 27-1-18-2 (the insurance premiums tax);

(7) IC 6-5.5 (the financial institutions tax); and

(8) IC 6-2.5 (the state gross retail and use tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 5. (a) A taxpayer is entitled to a credit equal to the amount determined under section 6 of this chapter against the taxpayer's state tax liability for a taxable year if the following requirements are satisfied:

(1) The taxpayer does the following:

(A) The taxpayer makes a qualified investment in that taxable year.

(B) The taxpayer makes a good faith attempt to recover the costs of the environmental damages from the liable parties.

(C) The taxpayer submits a plan to the legislative body of the political subdivision in which the property is located to redevelop the property in a manner in which the legislative body determines to be in the best interest of the community.

(2) The legislative body of the political subdivision in which the property is located adopts a resolution under section 7 of this chapter approving the credit.

(b) The redevelopment plan must include a statement of public benefits, which must include the following:

(1) A description of the proposed redevelopment.

(2) An estimate of the number of individuals who will be employed or housed in the new development, and an estimate of the annual salaries of the employees.

(c) In determining whether the redevelopment is in the best

interest of the community, the legislative body must consider, among other things, whether the proposed development promotes:

(1) the development of low to moderate income housing;

(2) the development of green space;

(3) the development of high technology businesses; or

(4) the creation or retention of high paying jobs.

Sec. 6. The amount of the credit allowed under this chapter is equal to the lesser of:

(1) ten percent (10%) multiplied by the qualified investment made by the taxpayer during the taxable year; or

(2) two hundred thousand dollars ($200,000).

Sec. 7. After the submission of a statement of benefits under section 5 of this chapter, the legislative body may adopt a resolution to approve a tax credit.

Sec. 8. Before adopting a resolution under section 7 of this chapter, a legislative body shall publish notice of the proposed resolution and the public hearing required under section 9 of this chapter in accordance with IC 5-3-1. The published notice must contain the substance of the proposed resolution.

Sec. 9. Before adopting a resolution under section 7 of this chapter, the legislative body must review the statement of benefits required under section 5 of this chapter and conduct a public hearing on the proposed tax credit.

Sec. 10. (a) The legislative body shall determine whether to approve a tax credit allowed under this chapter.

(b) A legislative body may approve a credit only if the following findings are made in the affirmative:

(1) The taxpayer:

(A) has never had an ownership interest in an entity that contributed; and

(B) has not contributed;

to contamination (as defined in IC 13-11-2-43) that is the subject of the voluntary remediation, as determined under the written standards adopted by the department of environmental management.

(2) The proposed improvement or property will be located in a zone as defined in IC 6-1.1-42-4.

(3) The estimate of the value of the remediation and redevelopment is reasonable for projects of that nature.

(4) The estimate of the number of individuals who will be housed, employed, or whose employment will be retained can be reasonably expected to result from the proposed described

remediation and redevelopment.

(5) The estimate of the annual salaries of those individuals who will be employed or whose employment will be retained can be reasonably expected to result from the proposed described remediation and redevelopment.

(6) Any other benefits about which information was requested are benefits that can be reasonably expected to result from the proposed described remediation and redevelopment.

(7) The totality of benefits is sufficient to justify the credit.

Sec. 11. (a) If the amount determined under section 6 of this chapter in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over for not more than the immediately following five (5) taxable years. The amount of the credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback of any unused credit.

Sec. 12. (a) To be entitled to a credit under this chapter, a taxpayer must request the department of environmental management to determine if costs incurred in a voluntary remediation involving a brownfield are qualified investments.

(b) The request under subsection (a) must be made before the costs are incurred.

(c) The department of environmental management shall find that costs are a qualified investment to the extent that the costs:

(1) result from work performed in Indiana to conduct a voluntary remediation under IC 13-25-5 that involves the remediation of a brownfield;

(2) may not be recovered by the taxpayer from any other person after the taxpayer has made a good faith effort to recover the costs; and

(3) result in taxable income to any other Indiana taxpayer;

as determined under the standards adopted by the department of environmental management.

Sec. 13. (a) To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return or returns in the manner prescribed by the department.

(b) The taxpayer shall submit all of the following to the department of state revenue:

(1) The certification of the credit by the department of environmental management.

(2) Proof of payment of the certified qualified investment.

(3) Proof of the legislative body's approval of the credit.

(4) Information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether an investment cost is a qualified investment cost.

Sec. 14. (a) If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, a shareholder, a partner, or a member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a tax credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim more than one (1) credit for the same qualified expenditure.

Sec. 15. (a) The amount of tax credits allowed under this chapter may not exceed two million dollars ($2,000,000) in a state fiscal year.

(b) The department shall record the time of filing of each application for allowance of a credit under section 13 of this chapter and shall approve an application, if the applicant otherwise qualifies for a tax credit under this chapter, in the chronological order in which the application is filed in the state fiscal year.

(c) If the total credits approved under this section equal the maximum amount allowable in a state fiscal year, an application thereafter filed in that same fiscal year may not be approved. However, if an applicant for whom a credit has been approved fails to file the statement of proof of payment required under section 13 of this chapter, an amount equal to the credit previously allowed or set aside for the applicant may be allowed to the next eligible applicant or applicants until the total amount has been allowed. In addition, the department may, if the applicant so requests, approve a credit application, in whole or in part, with respect to the next succeeding state fiscal year.

(d) The department of state revenue shall report the total credits

granted for each state fiscal year to the treasurer of state. The treasurer of state shall transfer to the state general fund an amount equal to the total credits in equal proportion from the industrial development grant fund (IC 4-4-12) and the subaccount of the environmental remediation revolving loan fund (IC 13-19-5). If the appropriations from the grant fund or subaccount exceed the amount available in the fund or subaccount, the appropriation is reduced to the amount available and the deficiency may not be augmented from the state general fund.

SECTION 2. [EFFECTIVE JANUARY 1, 2000] **IC 6-3.1-20, as added by this act, applies to taxable years beginning after December 31, 1999.**

SENATE MOTION

Mr. President: I move that Senator Gard be added as second author of Senate Bill 643.

SIMPSON

COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 643, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 5, delete lines 39 through 42

Page 6, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill be recommitted to the Senate Committee on Finance.

(Reference is to SB 643 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. President: The Senate Committee on Finance, to which was referred Senate Bill No. 643, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 7, delete "twenty-five percent (25%) multiplied by the qualified" and insert "**the lesser of:**

(1) ten percent (10%) multiplied by the qualified investment made by the taxpayer during the taxable year; or

(2) five hundred thousand dollars ($500,000).".

Page 3, delete line 8.

Page 4, line 14, after "is" insert "**not**".

Page 4, line 14, after "credit" insert "**.**".

Page 4, delete line 15.

and when so amended that said bill do pass.

(Reference is to SB 643 as printed February 10, 1999.)

BORST, Chairperson

Committee Vote: Yeas 13, Nays 2.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 643, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STURTZ, Chair

Committee Vote: yeas 12, nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred Senate Bill 643, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 10, delete "five" and insert "**two**".

Page 3, line 10, delete "($500,000)" and insert "**($200,000)**".

Page 5, line 22, delete "five" and insert "**two**".

Page 5, line 22, delete "($5,000,000)" and insert "**($2,000,000)**".

Page 5, between lines 40 and 41, begin a new paragraph and insert:

"**(d) The department of state revenue shall report the total credits granted for each state fiscal year to the treasurer of state. The treasurer of state shall transfer to the state general fund an amount equal to the total credits in equal proportion from the industrial development grant fund (IC 4-4-12) and the subaccount of the environmental remediation revolving loan fund (IC 13-19-5). If the appropriations from the grant fund or subaccount exceed the amount available in the fund or subaccount, the appropriation is reduced to the amount available and the deficiency may not be augmented from the state general fund.**".

and when so amended that said bill do pass.

(Reference is to SB 643 as printed March 2, 1999.)

BAUER, Chair

Committee Vote: yeas 24, nays 1.